

July 8<sup>th</sup> 2007

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

**Re: MB Docket No. 07-57**

Dear Ms. Dortch:

I would like to respectfully request that the comments below, be entered into the above-captioned docket. The comments are in reference to the compiled analysis provided by The Carmel Group, titled *Higher Pricess, Less Content and A Monopoly: Good for the Consumer?, The Propsoed Sirius-XM Merger*.

Respectfully submitted,

Todd Foust  
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**Rebuttal to the whitepaper titled *Higher Pricess, Less Content and A Monopoly: Good for the Consumer?, The Propsoed Sirius-XM Merger*, provided by The Carmel Group.**

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TCG = The Carmel Group Whitepaper quotes

Comment = Comments about the statements or claims presented by The Carmel Group

1. TCG – “True supporters of this merger appear to be few in number. Other than the companies themselves, suggested or actual support comes from but a scattering of Wall Street bankers and related analysts; additionally, one consumer group, Public Knowledge, did mention approval, but only based upon extremely restrictive and unrealistic conditions. “

Comment – This is a blanket statement with no support. The consumer is not properly represented in this docket which is why the FCC has sent a public notice requesting consumer feedback. I have not met a Sirius or XM subscriber who doesn't want this merger to go through. If the merger is approved then subscribers will have more devices to choose from, more content to listen to, XM subscribers will get better reception quality all while paying just the same subscription cost, or even cheaper.

2. TCG – “In sum, nowhere in this equation is there a significant benefit provided to the consumer, content provider or performing artist, as a result of this proposed merger.”

Comment – This is a completely false statement. I’ve already outlined some of the very significant consumer benefits. The performing artists will also benefit from this merger. When an artists song plays after the merger, it will be heard by twice the number of subscribers currently. Artists want their songs to be heard by more consumers so that they will sell more copies of their content. If you could play one of your songs that you want to sell to the public, would you want 6 million people to listen or 13 million people to listen? Of course you’d want to get your ‘message’ out to more people who can make a decision on whether to buy your content from various outlets.

3. TCG – “At best, satellite radio competes against a sphere of competitors no broader than today’s analog AM and FM broadcasters. Yet, for antitrust purposes, even this view is overstated, because everyone realizes -- even Sirius and XM -- that the AM and FM broadcasters across the U.S. do not compete in the national market against the national satellite radio broadcasters. The true measure must look to services that can substitute for satellite radio, viewed as of March 2007, the merger filing date.”....” Neither MP3s, nor Internet radio, nor HD terrestrial radio, nor music-to-cell phones are substitutable for satellite radio. For example, as is true of any MP3 device, an iPOD is a storage device, not a receiver. An iPOD cannot access live or new music, sports, comedy, news and talk shows which are compiled, chosen and distributed by a third party, without any effort to collect that music on the part of the listener. This further limits the extremely broad definition Sirius and XM would give to the competitive field of this proposed merger defines. Plus, Internet radio and music-to-cell phones are rarely if ever featured as offerings in vehicles. In addition, like today’s HD terrestrial radio, Internet radio and music-to-cell phones are merely delivery devices, and are yet to become full-fledged content services unique from any other. Thus, MP3 devices, Internet radio, HD terrestrial radio and music-to-cell phones remain in the category of audio services that are not substitutable with the services of the only two national satellite radio providers, Sirius and XM.”

Comment – The Carmel Group needs to do better research! XM and Sirius DO compete against these devices. The point TCG fails to make is that there are two battlefields that Sirius and XM compete on. First is that they provide live talk radio, just like AM/FM broadcasters, so they are direct competitors. TCG states that AM and FM broadcasters do not compete in the national market and this is not true. Sean Hannity is one example of a broadcaster that can be heard across the country over terrestrial radio, as well as Bob&Sheri and many many other nationally syndicated broadcasters. TCG comments that there are no other receiver devices that can get live content but this is again another incorrect point. As of the filing date for this docket a consumer can get a PDA or smartphone device that connects to the internet to listen to live streaming music and talk show content... all within the car! This is a FACT that TCG failed to fully research on behalf of the National Association of Broadcasters... how convient.

Second is that XM and Sirius provide music channels. This puts them in direct competition with MP3s, Internet Radios, HD terrestrial radio and music-to-cell phones. When people want to listen to music they have a variety of ways to get the content. Yes the iPod is not a receiver device, but don't blame Steve Jobs for not thinking ahead. These content devices play the same content that the satellite receivers play. **Music is not made available to Sirius/XM before it is made available for download to an iPod, Zune or other MP3 device.** Consumers can get their music onto their MP3 player, cell phone or PDA then listen through playback in their cars through many car kit packages available for these devices.

4. TCG – “Historical Comparison By example, in EchoStar’s 2002-03 attempt to purchase rival satellite video service DirecTV, those duopolists made a similar argument that video competition included future video plans by telephone providers, such as Verizon and AT&T. Yet the FCC refused to look forward years into an amorphous telecom crystal ball, rejecting that claim and instead measuring the competitive subscription video marketplace at the time of the filing to include a single primary opponent, i.e., the U.S. cable industry.”

Comment – Again, as already pointed out, a consumer can use a PDA or smartphone to connect to the internet and listen to live internet radio stations and talk show stations all within their car even BEFORE the filing date of this docket.

5. TCG – “Satellite radio has created and defined a unique industry, and one that does particularly well what quite arguably none other does: it delivers, one-way, to a national audience, hundreds of subscription channels of multi-varied, unregulated content, via two competitive services, using a high-quality digital format.”

Comment – I looked up Clear Channel in the dictionary and it looks just like this. Due to national syndication AM/FM radio is the clear and direct customer in this market space. Due to nationally available wireless internet connections, PDAs, smartphones and other like devices are also competitors in this market space.

6. TCG – “...should the government sanction the proposed Sirius-XM merger, it would result in a loss of a critical competitive dynamic that is not in the public interest.”

Comment – This is a biased, unsupported and disproven, as noted above, statement. The FCC should make its decision based on public opinion and facts.

7. TCG – “EchoStar-DirecTV Similarity - Today’s Sirius-XM competition is quite similar to the 11-year-old intra-industry competition that exists between satellite video providers, DirecTV and EchoStar, which was proven, just four years ago, during their proposed merger in 2002-03, to so substantially benefit yesterday’s, today’s and tomorrow’s consumers. That EchoStar-DirecTV merger proposal was soundly rejected, 5-0, by the FCC’s commissioners.”

Comment – I don’t know the basis of the EchoStar-DirecTV merger proposal and decision but I do want to provide some comments. I think the situation and prices

today would be the same or better had the EchoStar-DirectTV merger gone through. The reason being is that these satellite providers offer a luxury service. If prices to receive satellite cable tv were too high then I, as a consumer, would simply just select standard coaxial cable service. The direct competitor in that case was clearly Time Warner and other cable providers. Consumers at least have a choice between getting cable through coaxial line or over satellite so that pricing battle still exists. The major difference in the EchoStar-DirectTV merger and the XM-Sirius merger is that some of its competitors offers FREE service. In addition to that the XM-Sirius merger faces many more competitors, whereas for cable it was you can either cable tv over Satellite or Coaxial where both had similar and unique content.

8. TCG – “If, as Sirius and XM now first claim, the relevant market for the services they offer includes all HD digital terrestrial and Internet radio, MP3s, and music-to-cell phones, then how can Sirius and XM be the only two within that broader definition that 1) have exclusive deals with most vehicle manufacturers bringing in millions of potential new customers annually, 2) charge a monthly fee for the 100s of channels they provide, 3) deliver to a national audience, 4) offer consumers an exclusive blend of one-of-a kind in-house produced and “outside” programming, 5) offer consumers all of their news, comedy, talk, sports, and music formats together on one service and device, 6) are primarily ad-free, and 7) offer content that is not regulated by the government? Thus, it is easy to say: as competition, no other service today is substitutable with that of Sirius and XM.”

Comment – 1. Microsoft has an exclusive deal, that was inked well before this docket filing date, to provide a docking station in the current 2008 Ford Motor vehicles. This docking station supports Ipods and Zune players and integrates with the car stereo system. 2. XM/Sirius charge a fee because they run advertisement music channels, much like you would find on an internet radio channel accessible from a PDA or smartphone from within the car. 3. Just like nationally syndicated terrestrial/HD digital as well as Internet Radio. 4. Just like Internet Radio and Terrestrial radio. 5. There are many different devices with various pricing ranges that all receive and broadcast XM/Sirius content, just like smart phones with internet radio. 6. Just like internet radio as well as content stored on MP3 devices. 7. Just like internet radio and content stored on media devices.

9. TCG – “Lower Prices? Mr. Karmazin also suggests lower prices? No company is going to lock itself down to more than a few years of price restrictions. What about after that? Especially if there continues to be no comparable in-vehicle music, news, comedy, sports, data and video service automatically installed in every new auto reaching the U.S. consumer, how can the consumer expect prices to remain at government-controlled levels? “

Comment – The Carmel Group and NAB just don’t get it. The cost of producing the content will only have marginal cost increases. To offset any costs XM/Sirius will attempt to increase the number of subscribers. Based on the number of subscribers the more listeners advertisers can advertise to on the commercial backed channels. Again this is NOT a valid concern as Sirius/XM will be in competition with others to keep prices low. If the prices for a subscription are too high then the U.S. consumer

will simply choose the cheaper alternative of wireless internet connected devices or the free nationally broadcasted terrestrial radio. Also, they assume that there is no alternative to no comparable in-vehicle music, news, comedy, sports, data and video service installed in every new auto. This argument is based on future assumptions and if that's the case then the argument can be made that wireless internet connected devices will be this alternative as it is already available in every automobile.

10. TCG – “Mr. Karmazin also touts less consumer confusion? First, what confusion is he referring to? Is there evidence that consumers today are having problems with the difference between XM and Sirius? Second, when will “less confusion” ensue? Will it come after the two companies, via this merger, have already driven off hundreds of thousands (or millions) of potential consumers because of the deal's complexity and the idea that many satellite radios may no longer be as accessible once a merger is approved?

Comment – The consumer confusion comes with which service has what content and which device will receive which content. It is MORE confusing today as consumers have to decide which services and content they may or may not want. After the merger there will be no more confusion. Consumers can purchase any type of satellite receiver device, or continue to use the one they already have, and then listen to the broad spectrum of additional content. Consumers will no longer have to decide if they want NFL content OR MLB content, Howard Stern content or Oprah content. They will simply get this content without any additional work on the consumers part. This is exclusive content which is similar to the exclusive content accessible via terrestrial radio or wireless internet connected devices. The Carmel Group assumes that ‘hundreds of thousands (or millions) of potential consumers’ will be driven off by the complexity of the merger. This is a ludicrous assumption! It will be a seamless transition for the consumer. One day they will be listening to their current content and the next day there will be more options for them on the same device. For the new consumer there is no more confusion and the combination of additional content will be more attractive to them not less.

11. TCG – Mr. Karmazin and his team have also championed the cost savings expected from the proposed merger. Yet, like other key claims, the amount of and timing of these so-called cost cuts are seriously questioned, both by the media and Wall Street. Plus, even if there are such cost savings, they do not accrue to the consumer, but rather to the companies' shareholders. In fact, from the very beginning, hasn't this shareholder benefit theme been the only true motivation behind this merger?

Comment – Yes a merger of these two companies will be a benefit to shareholders, but this is ONLY because it will offer consumers a more worthy competitor in the entertainment and media delivery and content producer market space.

12. TCG – Because the proposed merger necessitates a fairly complex technical upgrade plan, many millions of consumers will suffer through costly, confusing and unnecessary hardware changes and switch-outs.

Comment – This is again another uninformed statement by The Carmel Group. They apparently aren't familiar with the ability to update the software on these devices through the satellite reception itself. How do they expect the merger to cost the consumer anything? XM and Sirius have already explained the technical details of how current subscribers can keep their current devices to get the new content after the merger. This will be a seamless transition for the consumer and will not cost them anything in time or funds for the merger.

13. TCG – “Further, can anyone today imagine the merger of any combination of Comcast, Time Warner or even Cox? Yet, allowing this Sirius-XM merger would recommend to the largest cable operators a similar move to merger and/or acquisition.”

Comment – Let's talk about that. It would not matter if Comcast or Cox or Time Warner were allowed the merge. I supposed is that they are separate companies to promote competition and lower prices, HOWEVER, I CANNOT Choose which provider I want. If consumers want cable television then they can only get it from the provider in their area. It WOULD be competition if I was able to get Cox OR Time Warner at my house and was able to call either company to get the best prices, however I can only call the company that provides this service to my area. I REALLY don't see the competition here in the cable television market. If my cable provider wanted to triple their prices, I'd either have to pay the higher price, switch to Satellite television, or move my entire house and family to another location where there is a provider offering cheaper service. There IS NO Competition b/w Comcast, Time Warner and Cox. The only competition is between these companies and the Satellite television services of Dish Network and Direct TV, as well as Online television at this point.

I could go on, but I'm not getting paid to draft this document like The Carmel Group was. I'm just a consumer who wants this merger to go through as I see the real competitive market place for satellite radio. I'm not in fear of any price increases because if they increase the prices then subscribers will drop the service and this publically traded company will feel that impact as well as investors. The combined company will be better suited to keep prices lower to be competitive in gaining subscribers from the various other forms of media delivers including the free terrestrial radio.

The fact that the National Association of Broadcasters hired The Carmel Group to do this research explains the biased nature of their argument. The NAB and other companies involved with terrestrial radio do not want this merger to go through because they are in DIRECT competition with satellite radio and if you can weaken your competition by lobbying to the government then of course they would.

In summary, this merger should be approved to proceed. The merger doesn't change the competitive market place that exists, yet it provides tons of benefits to consumers who already subscribe and potential future subscribers

Please do what is best for the consumer and vote yes to allow the merger of Sirius Satellite Radio and XM Satellite Radio Holdings Inc.

Sincerely,  
Todd Foust